

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WILLIAM SCOTT SMITH,

Petitioner,

v.

STEVEN SINCLAIR,

Respondent.

CASE NO. 3:21-cv-05801-RSM-BAT

ORDER DECLINING TO ADOPT
REPORT AND RECOMMENDATION

This matter comes before the Court on the Report and Recommendation (“R&R”) of the Honorable Brian A. Tsuchida. Dkt. #3. On October 28, 2021, Petitioner, proceeding *pro se*, filed this 28 U.S.C. § 2254 habeas petition against Respondent. Dkt. #1. The Court notified Petitioner that his filing was deficient and required that he submit an application to proceed *in forma pauperis* (“IFP”) or, alternatively, pay the filing fee by December 1, 2021. Dkt. #2. On December 3, 2021, Judge Tsuchida issued the R&R recommending dismissal of Petitioner’s petition for failure to correct the filing deficiency. Dkt. #3. In lieu of objections to the R&R, Petitioner moved for an extension of time and requested an additional IFP form. Dkt. #4. On January 7, 2022, The Court granted Petitioner’s motion for extension of time. Dkt. #5. On January 15, 2022, Petitioner cured his IFP application and his petition was posted the same day. Dkt. #6.

1 Because Petitioner has now applied to proceed IFP, the Court believes it would be
2 improper to adopt the R&R as drafted. The Court will refer this matter back to Judge Tsuchida
3 for further consideration.

4 Having reviewed the relevant briefing and the remainder of the record, the Court hereby
5 DECLINES to adopt the pending Report and Recommendation. Dkt. #3. The Court DIRECTS
6 this matter to be referred back to Judge Tsuchida for further consideration. The Clerk shall
7 provide copies of this Order to the parties.

8 DATED this 24th day of January, 2022.

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12 RICARDO S. MARTINEZ
13 CHIEF UNITED STATES DISTRICT JUDGE
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